



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JAN 21 2010

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0189 9828

Mr. Joel Borgardt
Lamplight Farms, Inc.
4900 N. Lilly Road
Menomonee Falls, WI. 53051

Consent Agreement and Final Order **FIFRA-05-2010-0006**

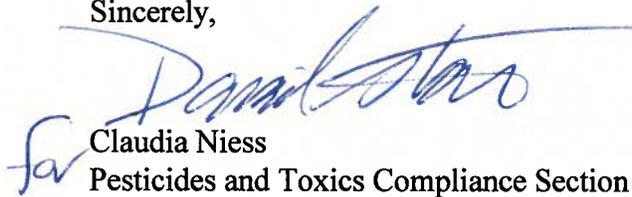
Dear Mr. Borgardt:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on January 21, 2010 with the Regional Hearing Clerk.

The civil penalty in the amount of \$7,500 is to be paid in the manner described in paragraphs 39 thru 40. Please be certain that the number **BD 2751045P006** and the docket number are written on both the transmittal letter and on the check. Payment is due by February 20, 2010 (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,


for Claudia Niess
Pesticides and Toxics Compliance Section

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. FIFRA-05-2010-0006
)	
Lamplight Farms, Inc.)	Proceeding to Assess a Civil Penalty
Menomonee Falls, WI)	Under Section 14(a) of the Federal
)	Insecticide, Fungicide, and Rodenticide
Respondent.)	Act, 7 U.S.C. § 136l(a)

RECEIVED

JAN 21 2010

Consent Agreement and Final Order
Commencing and Concluding a Proceeding

REGIONAL HEARING CLERK
USEPA
REGION 5

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA or the Act), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Lamplight Farms, Inc. (Lamplight), a corporation doing business in the State of Wisconsin.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

10. The importation of pesticides into the United States is governed by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of EPA. These regulations are found at 19 C.F.R. Part 12.

11. 19 C.F.R. § 12.111 states, in pertinent part, that “all imported pesticides are required to be registered under the provisions of Section 3 of FIFRA, 7 U.S.C. § 136a, and under the regulations (40 C.F.R. Part 156.10) promulgated thereunder by the Administrator before being permitted entry into the United States.”

12. Section 3(a) of FIFRA, 7 U.S.C. § 136a(a), and 40 C.F.R. § 152.15 state that no person in any state may distribute or sell to any person any pesticide that is not registered under this Act.

13. 40 C.F.R. § 152.15 states no person may distribute or sell any pesticide product that is not registered under the Act, except as provided in 40 C.F.R. §§ 152.20, 152.25, and 152.30. A pesticide is any substance (or mixture of substances) intended for a pesticidal purpose, *i.e.*, use for the purpose of preventing, destroying, repelling, or mitigating any pest or use as a plant

regulator, defoliant, or desiccant. A substance is considered to be intended for a pesticidal purpose, and thus to be a pesticide requiring registration, if:

- (a) The person who distributes or sells the substance claims, states, or implies (by labeling or otherwise): (1) That the substance (either by itself or in combination with any other substance) can or should be used as a pesticide; or (2) That the substance consists of or contains an active ingredient and that it can be used to manufacture a pesticide; or
- (b) The substance consists of or contains one or more active ingredients and has no significant commercially valuable use as distributed or sold other than (1) use for pesticidal purpose (by itself or in combination with any other substance), (2) use for manufacture of a pesticide; or
- (c) The person who distributes or sells the substance has actual or constructive knowledge that the substance will be used, or is intended to be used, for a pesticidal purpose.

14. 40 C.F.R. § 152.25 exempts minimum risk pesticides from the requirements of FIFRA provided that all criteria of 40 C.F.R. § 152.25(f) are met as follows:

- (a) The product only contains active ingredients that are listed under FIFRA,
- (b) The product only contains inert ingredients that are listed under FIFRA,
- (c) Each product bears a label identifying the name and percentage (by weight) of each active ingredient and the name of each inert ingredient,
- (d) The product does not bear claims either to control or mitigate microorganisms that pose a threat to human health, including but not limited to disease transmitting bacteria or viruses, or claims to control insects or rodents

carrying specific diseases, including, but not limited to ticks that carry Lyme disease, and

(e) The product does not include any false and misleading labeling statements, including those listed in 40 C.F.R. § 156.10(a)(5)(i) through (viii).

15. Section 12(a)(1)(A) of FIFRA, 7 U.S.C. 136j(a)(1)(A), states that it is unlawful for any person in any state to distribute or sell to any person any pesticide that is not registered under Section 3.

16. 40 C.F.R. § 156.10(a)(1)(vi) states, in pertinent part, that every pesticide product shall bear a label that clearly and prominently shows the ingredient statement as prescribed in 40 C.F.R. § 156.10(g).

17. The term “distribute and sell” as defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), means “to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.”

18. The term “pesticide” as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. § 152.3 means “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.”

19. The term “person,” as defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s), “means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.”

20. The Administrator of EPA may assess a civil penalty against any registrant who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009 pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

21. Respondent is, and was at all times relevant to this Complaint, a corporation and, therefore, is a "person" as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

22. At all times relevant to this Complaint, Respondent owned and operated a place of business located at 4900 N. Lilly Road, Menomonee Falls, Wisconsin 53051.

23. On or about December 2, 2009, Alliance International, located at 1555 Mittel Boulevard, Suite M, Wood Dale, Illinois 60191, was Respondent's broker or agent.

24. On or about December 2, 2009, Respondent's broker/agent submitted a Notice of Arrival of Pesticides and Devices (NOA), EPA Form 3540-1, to EPA for the import shipment of 1,675 cartons of a product "Tiki Naturals Citronella Candle," finish good number 1409072.

25. The importer of record for this shipment was Lamplight.

26. The entry number for this shipment on the NOA was DQ1-0312950-7.

27. The visible portion of the "Tiki Naturals Citronella Candle," finish good number 1409072, label did not bear the percentage (by weight) of each active ingredient and the name of each inert ingredient.

28. The active and inert ingredients were listed on the reverse side of the top dust cover, which was placed face down on top of the product and therefore was not clearly and prominently visible on the label.

29. Respondent intended "Tiki Naturals Citronella Candle," finish good number 1409072, to be exempt from FIFRA requirements by meeting the conditions of the minimum risk exemption set forth in 40 C.F.R. § 152.25(f).

30. Respondent's product failed to qualify for the minimum risk exemption under 40 C.F.R. § 152.25(f) because the product failed to bear a label identifying the name and percentage (by

weight) of each active ingredient and the name of each inert ingredient as required by 40 C.F.R. § 152.25(f)(3)(i).

31. “Tiki Naturals Citronella Candle,” finish good number 1409072, is a pesticide as defined by Section 2(u) of FIFRA, 7 U.S.C. § 136(u), and 40 C.F.R. §§ 152.3 and 152.15.

32. “Tiki Naturals Citronella Candle,” finish good number 1409072, is not registered as a pesticide as required by Section 3(a) of FIFRA, 7 U.S.C. § 136a(a).

33. On or about December 2, 2009, Respondent was distributing or selling “Tiki Naturals Citronella Candle,” finish good number 1409072, as those terms are defined in 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

Specific Allegations

Count 1

34. Complainant incorporates by reference the allegations contained in paragraphs 1 through 33 of this Complaint.

35. Respondent distributed or sold “Tiki Naturals Citronella Candle,” finish good number 1409072, on or about December 2, 2009 in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

36. Respondent’s violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A) subjects Respondent to the issuance of an Administrative Complaint assessing a civil penalty under Section 14(a) of the FIFRA, 7 U.S.C. §136l(a).

Civil Penalty

37. Section 14(a)(4) of FIFRA, 7 U.S.C. §136l(4), requires the Administrator to consider the size of the business of the person charged, the effect on the person’s ability to continue in

business, and the gravity of the violation, when assessing an administrative penalty under FIFRA.

38. Based on an evaluation of the facts alleged in this complaint and the factors in Section 14(a)(4) of FIFRA, Complainant calculated an initial civil penalty against Respondent in the amount of \$7,500. Complainant evaluated the facts and circumstances of this case with specific reference to EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009.

39. Within 30 days of the effective date of this CAFO, Respondent must pay a \$7,500 civil penalty for the FIFRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

40. A transmittal letter stating Respondent's name, complete address, the case title, the case docket number, and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Claudia Niess (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Nidhi O'Meara (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

41. This civil penalty is not deductible for federal tax purposes.

42. If Respondent does not pay the civil penalty timely, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

43. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

44. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

45. This CAFO does not affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

46. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state, and local laws.

47. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for FIFRA.

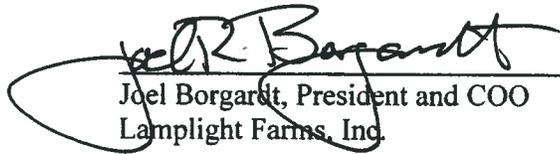
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48. The terms of this CAFO bind Respondent, its successors, and assigns.
 49. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.
 50. Each party agrees to bear its own costs and attorney fees in this action.
 51. This CAFO constitutes the entire agreement between the parties.
 52. The effective date of this CAFO is the date it is filed with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, Chicago, Illinois.

In the Matter of:

Lamplight Farms, Inc.
Docket No. FIFRA-05-2010-0006

RESPONDENT
Lamplight Farms, Inc.

12/31/09
Date


Joel Borgardt, President and COO
Lamplight Farms, Inc.

COMPLAINANT
Region 5
United States Environmental Protection Agency

1/19/10
Date


Margaret M. Guerriero
Director
Land and Chemicals Division

**In the Matter of:
Lamplight Farms, Inc.
Docket No. FIFRA-05-2010-0006**

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

1/20/10
Date

Walter W. Kovalich
for
Bharat Mathur
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

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USEPA
REGION 5

ENVIRONMENTAL
PROTECTION AGENCY
JAN 21 2010
OFFICE OF REGIONAL
COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Lamplight Farms Inc., was filed on January 21, 2010 with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0189 9828, a copy of the original to the Respondent:

Mr. Joel Borgardt
Lamplight Farms, Inc.
4900 N. Lilly Road
Menomonee Falls, WI. 53051

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Nidhi O'Meara, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. **FIFRA-05-2010-0006**

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